United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

To be argued by
William B. Gray

Docket No. 75-7114

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B
P/S

STEPHANIE CRAWFORD,

Appellant

v.

GENERAL ROBERT E. CUSHMAN, JR.
COMMANDANT,
UNITED STATES MARINE CORPS,

Appellee

Appeal from the United States District Court for the District of Vermont

BRIEF FOR THE APPELLEE

GEORGE W. F. COOK
United States Attorney

WILLIAM B. GRAY
Assistant U. S. Attorney
District of Vermont

2

TABLE OF CONTENTS

TABLE OF CASES

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

STEPHANIE CRAWFORD,

Appellant

v.

GENERAL ROBERT E. CUSHMAN, JR.
COMMANDANT,
UNITED STATES MARINE CORPS,

Appellee

BRIEF FOR THE APPELLEE

Preliminary Statement

Stephanie Crawford appeals from findings of fact, conclusion and order entered by the Honorable James S. Holden, Chief United States District Judge, District of Vermont dated July 12, 1974, dismissing the complaint herein and entering judgment for the defendant, the Commandant, United States Marine Corps (hereinafter Marine Corps). The complaint, dated February 23, 1971,

sought a "declaratory judgment and a writ in the nature of mandamus ordering the defendant to reinstate plaintiff in the Woman's Marine Corps on grounds that her discharge therefrom, and the denial of her right to reenlist therein on grounds that she has a child, denies her due process of law and equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution" (A 3)* On July 6, 1972, the United States District Court denied a motion of the Marine Corps for an order dismissing the complaint for failure to state a claim for relief, for failure to exhaust administrative remedies, and for summary judgment, substantially on the ground that additional facts were necessary for a determination of the issues (A 6 - 9). Thereafter, the Marine Corps again moved for summary judgment, this time including an affidavit from the Director of Personnel for the

---

* A, refers to the joint Appendix, and Tr. to the transcript dated March 26 & 27, 1974. Other references are set forth in full.

United States Marine Corps setting forth the reasons for the regulation under which Miss Crawford was discharged. On March 26, 1973 the District Court again denied the Marine Corps' renewed motion for summary judgment. Trial was held on March 26 & 27, 1974 and both parties produced evidence. On July 12, 1974 the District Court entered an order dismissing the complaint and entering judgment for the Marine Corps on the ground that Stephanie Crawford's "discharge for reason of pregnancy in 1970 and the denial of reenlistment in January 1971 because she had in her custody a dependant child under 18 years of age, in keeping with the regulations in effect on that date, were constitutionally valid" (A 39).*

On July 22, 1974, Stephanie Crawford moved for a new trial and on October 10, 1974, this motion was amended to request, in the alternative, a request to produce additional testimony and for additional findings of fact and conclusions of law. In substance, these motions

---

*The opinion of the District Court may be found at 378 F. Supp. 717 (D. Vt. 1974).

sought to reopen the record for the production of evidence which was readily available to plaintiff Stephanie Crawford at the time of her original trial.* These motions were denied by the District Court on October 29, 1974, and on December 29, 1974, notice of appeal was filed.

---

*For example, the motion complained that there was, due to scheduling pressures, insufficient cross-examination of Brigadier General Edward A. Parnell, Director of Manpower, Plans and Policies, U.S.M.C. The transcript reflects that cross-examination of General Parnell was lengthy (approximately 30 pages compared with 14 pages on direct examination) and reflects no objection by plaintiff shen he was excused. Moreover, General Parnell had been examined before trial by plaintiff upon oral deposition so his testimony was fully anticipated (Tr. 163 - 210). The suggestion that Stephanie Crawford was "precluded" from introducing evidence on certain issues (Appellant's Brief p. 7, n. 5) is supported only by that allegation in her motion and is belied by the record.

STATEMENT OF FACTS

A. Stephanie Crawford's Military Service

On February 5, 1968, Stephanie Crawford, an unmarried woman aged 21, enlisted and was accepted in the United States Marine Corps for a term of three years.* Although at trial she denied knowledge of the pregnancy discharge regulations at the time of her enlistment (Tr. 214), Miss Crawford learned when she reported for basic training at boot camp that, under prevailing existing regulations, pregnancy would result in an "automatic discharge" from the Marine Corps (A 28). Miss Crawford made no effort to resign or remove herself from the Marine Corps and was willing to continue to serve knowing that the automatic pregnancy discharge regulation was in effect (Tr. 214).

---

* Four months before the expiration of her original tour of duty, Miss Crawford applied for a special assignment at El Toro Base in California which assignment extended her original tour of duty by approximately eight months (Tr. 240).

After basic training, Miss Crawford received instruction in service schools, including secretarial and data processing training. Eventually she was assigned to the Marine Corps Air Station El Toro, California where her duty assignment was office work. At this station she resided in open barracks together with approximately one hundred fifty other female Marines (A 28).

In March 1970, Stephanie Crawford became pregnant (A 28).* During the period from the middle of March until May 13, 1970, when her pregnancy was finally diagnosed, Stephanie Crawford reported to the base infirmary on approximately 18 occasions, complaining of persistent nausea, fainting and black-out spells, abdominal pain and fatigue. On April 20, 1970 Miss Crawford was transferred, at her request, to a change in duty assignments because of "emotional pressure."

---

*During the spring of 1970, Miss Crawford had been taking birth control pills and ceased taking them. The dates that she commenced and discontinued this medication are uncertain from the evidence (A 28; Tr. 51, 54).

On May 27, 1970, two weeks after her pregnancy was diagnosed and medically confirmed, Stephanie Crawford was discharged "for the convenience of the Government - under honorable conditions."* At the time of her discharge, approximately 20 months remained in Stephanie Crawford's period of enlistment, enlarged by her El Toro commitment (A 28).

In discharging Stephanie Crawford, the Commandant of the Marine Corps acted pursuant to the rules and regulations then in effect. Those rules and regulations, which had been in effect during the 1960's - the peak years of the Marine Corps' military involvement in Southeast Asia (Tr. 274) - were embodied in MCD P1900.16 ¶6012, as modified on 21 November 1969 and provided as follows:

> Discharge or Release from Active Duty for Convenience of the Government
>
> 1. The Secretary of the Navy, or the Commandant of the Marine Corps, may authorize or direct the discharge

---

*The general nature of Stephanie Crawford's discharge was determined by her duty proficiency mark - which was below that required for an honorable discharge - and not by the reason for her discharge (A 24).

or release from active duty of a Marine for the convenience of the Government for any one of the following reasons:

* * *

A woman member, whether married or unmarried, upon certification by a medical officer that she is pregnant, shall be discharged by her commander, for the convenience of the Government, or in the case of overseas commands, will be transferred to a major Marine Corps command housing Women Marines in the continental United States for discharge. The character of the discharge certificate issued in these cases will be as warranted by the women member's service record, regardless of her marital status. In the case of discharge for reason of the pregnancy of a woman member who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact and reason for the discharge. If, as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman member's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for convenience of the Government unless she requests, in writing, that she be retained in the service. In such latter case, the woman member, at the discretion of her commander, may be retained in the service, if she is found physically qualified for retention.

Following her discharge, Stephanie Crawford remained in California until the following August, and was afforded free medical care by the Marine Corps during her pregnancy. During her stay in California she consulted a naval medical officer at least once. In August 1970, she moved to Burlington, Vermont, in order to enter the Elizabeth Lurd Home, a facility for the care and treatment of unwed mothers during pregnancy. At Burlington, Miss Crawford received medical consultation, care and treatment afforded by obstetricians on the staff of the Medical Center Hospital of Vermont. During most of the last three months of pregnancy, Stephanie Crawford was confined to her bed as a result of the aggravation, by pregnancy, of a prior back injury. During the seventh month of pregnancy the plaintiff sustained an ankle injury as a result of a fall and was on crutches for about two weeks (A 30; Tr. 115, 215). If she had reamined in the Marine Corps, Stephanie Crawford would have had "great difficulty working for at least the last three months of [her] pregnancy" (Tr. 216).

On December 13, 1970, the plaintiff gave birth to a full term, normal and healthy baby. Miss Crawford made a good recovery and was able to seek work six weeks after her delivery.

In January 1971, Stephanie Crawford submitted a written reenlistment application to the sergeant in charge of the Marine Corps recruiting office at Burlington, Vermont and was informed that because she had a dependent child her application for reenlistment would not be approved.* This reason advanced by the recruiting sergeant was in accord with a Marine Corps Order (MCO P1100.61B ¶2209) in effect from September 4, 1970 to June 1, 1972. It provided, in part, that women applicants who have a child or children under 18 years of age are unacceptable for enlistment or reenlistment (A 30 - 31, 42).

At the time Stephanie Crawford was released from military service she offered no objection to her

---

*Her failure to maintain a satisfactory duty proficiency mark while in the Marine Corps also disqualified Miss Crawford for reenlistment (Tr. 183).

discharge. At the trial she testified she wanted to remain in the Marine Corps and would have gone to any duty station where she might be assigned. She wanted her child to remain with her, but in the event of assignment where dependents were not allowed, she would attempt to arrange for the child's care elsewhere. Her daughter remained with her until January 1974. Since that date the child has been in a foster home (A 31).

Stephanie Crawford was married on June 10, 1972 to a member of the United States Air Force, with whom she lived for five weeks. She then separated and divorce proceedings were pending at the time of the trial (A 31).

B. Marine Corps Personnel Requirements and Procedures

The District Court found that in 1970 there were approximately 310,000 Marines on active duty. Of this number, 2,000 were women. The military missions of the Marine Corps require readiness and mobility. To serve these capabilities, all personnel are expected to respond on short notice and without restriction, to

orders that might direct expeditious movement from one location to another. The demands of readiness and mobility are made on all personnel (A 31).

Each woman in the Marines is assigned a skill. Her duty station is determined by the needs of the service for the particular specialty at various locations where the Marine Corps is located. The only restriction of women members of the Marine Corps, is that imposed by the provision of 10 U.S.C. §6015, which forbids their assignment to aircraft engaged in combat missions. Duty on vessels of the Navy is confined to hospital ships and transports. Unscheduled vacancies and replacement transfers in designated skills impose administrative difficulties (A 31).

Female enlisted personnel are required to live in barracks, to participate in formations, ceremonial and otherwise. Women Marines are required to attend to daily policing of the barracks at 0600 and report for duty at 0730. There are no nurseries or other facilities

at Marine installations for the care of children of Marine personnel (A 32).*

The Marine Corps maintains no health services of its own; its medical service is provided by Navy officers and corpsmen. At its major bases in continental United States and in overseas stations, where women Marines were assigned, medical facilities are provided. Medical care in a few locations was limited to dispensaries. The dispensary staff would not normally have the capability of providing obstetrical care (A 32).

At the time Stephanie Crawford was released from military service, the only temporary physical disability which was cause for mandatory discharge was that of pregnancy. This was revised by way of an official bulletin, issued by the Department of the Navy Headquarters, United States Marine Corps, on March 26, 1971. The bulletin announced that all separation

---

* Although there is support in the trial record for this finding (Tr. 191 - 92), pre-trial interrogatories indicate day care facilities are available at some bases (A 22).

policies in reference to dependency status, parenthood and pregnancy of women officers and enlisted personnel, were being reviewed. Pending such review it was ordered:

a. In those instances in which a Woman Marine would normally be separated by reason of pregnancy, she will be advised that she may request retention, and that separation shall not be effected until the woman's request for retention has been considered by the Commandant of the Marine Corps. Requests for retention from reservists not on active duty should be forwarded to the Commandant of the Marine Corps (Code AF). All requests will be processed as expeditiously as possible and should include the woman's personal request for retention, a recommendation by her commanding officer and a medical officer's report. Each case will be considered on an individual basis.

b. In those cases wherein the officer or enlisted woman desires separation by reason of pregnancy, separation action should be taken in accordance with reference (a).

On June 28, 1972, the review resulted in a regulation which continued the change announced in the preceding bulletin (A 33, 42).

There are no Marine Corps regulations which disqualify applicants for enlistment, either male or female, from service on the grounds they have engaged in sexual intercourse. There are no regulations which require the discharge of a male Marine because he has impregnated a woman. There is no disqualification for his enlistment or reenlistment for such cause. Marine Crops regulations contain no provision which subjects a service man to discharge for begetting a child or children in or out of wedlock. Marine Corps regulations on May 27, 1970, as they relate to enlistment and reenlistment of male applicants with one or more dependents, were subject to special conditions or eligibility (A 33, 43 - 44).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY FOUND THAT THE MARINE CORPS' FORMER PREGNANCY DISCHARGE REGULATION WAS NOT IRRATIONAL, THAT IT BORE A FAIR AND SUBSTANTIAL RELATION TO A VALID MILITARY OBJECTIVE AND THAT STEPHANIE CRAWFORD'S DISCHARGE DID NOT VIOLATE EQUAL PROTECTION DEMANDS OF THE FIFTH AMENDMENT.*

The Marine Corps' former pregnancy discharge regulation does not constitute, as appellant now apparently concedes (Appellant's Brief pp. 12 - 13), an inherently suspect classification, sex discrimination or a deprivation of a fundamental right. See Frontiero v. Richardson, 411 U.S. 677 (1973)(Powell, J., concurring). Accordingly, the regulation is constitutionally valid if it bears a fair and substantial relation to a valid military objective and need not be subjected to close judicial scrutiny or justified by a compelling governmental interest. Reed v. Reed, 404 U.S. 71, 76 (1971); Kahn v. Shevin, 416 U.S. 351 (1974).

---

*Appellant's Brief contains two purportedly separate equal protection arguments (Points I and III), but the same response is applicable to both.

The District Court correctly found that the challenged regulation, now a superseded historical curiosity, met this constitutional requirement of a rational basis.

Judged against a "rational basis" test, it is clear that Stephanie Crawford has failed to establish that her discharge and the regulations under which her discharge was effected were in any respect irrational. Clearly, it was not irrational in May 1970, while heavily engaged in military combat, for the United States Marine Corps to retain and follow a regulation promiting military readiness and mobility which, as testified by General Parnell, sought to and did promite military readiness and mobility.

Stephanie Crawford argues that the challenged regulation was both overbroad, because it mandated the discharge of pregnant Marines who were able to function throughout the gestation period, and underinclusive, because it did not mandate the discharge of Marines with other debilitating but temporary conditions. The argument ignores the fact that although pregnancy may be a temporary condition, it usually leads to motherhood, a

condition normally more chronic and enduring. The Marine Corps' concededly important concern for military readiness and mobility (Appellant's Brief 20) are affected seriously by both conditions. In addition, Marines with other chronic debilitating conditions, such as obesity and pseudofolliculitis (a skin condition resulting from shaving which affects black males, predominantly) do result in discharges when they become an administrative burden to the Marine Corps, by restricing its mobility and readiness (Tr. 169 - 70).

Stephanie Crawford argues that the fact that the Marine Corps later changed its regulation to permit retention of pregnant Marines somehow shows the irrationality of the challenged regulation (App. Br. 20). As the District Court pointed out (A 39), "The change for a more appropriate rule does not afford an adequate basis for condemning its predecessor as arbitrary and capricious." See Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955). The mobility and readiness requirements of the Marine Corps during the 1960s were certainly greater than they are today. Moreover, there are often several rational ways of approaching the same problem. If Courts'

consider a change in regulations evidence of previous irrationality, Government agencies will be reluctant to make changes for fear that their changes will be construed against them.

Stephanie Crawford relies on three recent decisions of the Supreme Court. Weinberger v. Wiesenfeld, ___ U.S. ___, 95 S. Ct. 1225 (1975); Stanton v. Stanton, ___ U.S. ___, 95 S. Ct. 1373 (1975); Taylor v. Louisiana, ___ U.S. ___, 95 S. Ct. 692 (1975). Her reliance is misplaced.

In Weinberger v. Wiesenfeld, the Supreme Court found that benefits extended to widows with dependent children under the Social Security Act, but not to widowers similarly situated, violated the constitutional equal protection requirements incorporated in the Due Process clause of the Fifth Amendment. The basis for the decision was not that all distinctions between widows and widowers were unconstitutional; that distinction had already been sanctioned in Kahn v. Shevin, supra, when rationally based on a proper governmental purpose. Rather, the Supreme Court found that the purpose of the benefits, to enable a surviving parent to care for the child rather

than work, were subverted by the very distinction made in the statute conferring the benefits. 95 S. Ct. 1233 - 35. It is clear that if the purpose of the statute had been, as it was of the statute in Kahn v. Shevin, supra, and of the Marine Corps regulation here challenged, "an attempt to provide for the special problems of women", it would have been upheld. Weinberger v. Wiesenfeld, supra, 95 S. Ct. at 1236.

Stanton v. Stanton, supra, is also inapposite. In that case, like Reed v. Reed, supra, the distinction was based solely on sex with no serious justification even suggested. The Supreme Court had little difficulty in finding a statute which required a divorced parent to support his son until age 21, but his daughter only until age 18, created an irrational distinction.

Taylor v. Louisiana, supra, is a Sixth Amendment case regarding a challenge to jury composition in Louisiana where women are routinely excluded from jury service and has little bearing on the equal protection issues involved in the instant case. Also, like Stanton v. Stanton, no serious justification for the state law was offered.

By contrast, in the instant case, the District Court found that:

> The Congress has granted to the Secretary of the Navy broad authority to prescribe the manner in which women members of the Regular Marine Corps shall be trained and qualified for military duty and the type of duty to which they shall be assigned, proscribing only combat duty on aircraft and service on naval vessels except hospital ships and transports. 10 U.S.C. §6015. Under the civilian direction of the Secretary, the Commandant of the Marine Corps is best able to determine how the mission of that particular arm of service can be most competently performed and what personnel are qualified to completely execute its mission. By regulation applicable to the Marine Corps, it was determined that pregnancy rendered a woman member of the Corps unqualified for military service. This decision is a valid military concern, one in which the judiciary, in the interest of orderly government, should not intrude. See Orloff v. Willoughby, 345 U.S. 83, 94 (1953).
>
> The regulation has a rational basis, not solely in terms of a high level of military readiness and mobility, but upon obvious practical considerations as well. A pregnant service-woman, whether in early or late stages of that condition, could not be expected to respond to an emergency assignment at a distant station without proper attention to her physical well-being and that of her awaited child. After birth, absent adequate nursery and child care facilities, the presence of a child of tender years in a barracks environment would not promite the best interest of either the child or its mother. It would be disruptive to the structured military life to which all members of the command must conform. (A 36).

In addition, the District Court properly found that, unlike Frontierio v. Richardson, 411 U.S. 677 (1973),

the discharge of Stephanie Crawford and the denial of her reenlistment were not based solely on administrative convenience. The District Court noted:

> The retention of a servicewoman during the term of her pregnancy and the needs of a mother with a dependent child could not be accommodated with the structured life which attends performance of full military duty. The plaintiff's medical history established that her service after May 27, 1970 could only be performed at reduced level of physical capability that would overburden the assigned missions of the Marine Corps to constitute a mobile military arm, ready for immediate action within and beyond the continental limits of the United States. The fact that women Marines are not subject to combat duty does not relieve military personnel from the demands of readiness and mobility as a member of a unit assigned to support a combat force. These considerations on the facts presented afford a valid and rational basis for the regulation. Struck v. Secretary of Defense, 460 F.2d 1372 (9th Cir. 1971), cert. granted 409 U.S. 947 (1972), vacated and remanded to consider the issue of mootness, 409 U.S. 1071 (1972).

These findings of the District Court are supported by the evidence adduced at trial, and should not be disturbed by this Court.

The challenged regulation was a rational solution to a difficult problem.

Similarly, in contrast to the instant case where the challenged regulation is based not on gender

but on pregnancy, the Supreme Court recently upheld military laws which discriminate solely on the basis of gender. Schlesinger v. Ballard, ___ U.S. ___, 95 S. Ct. 572 (1975). In that case, a male officer challenged a mandatory discharge provision applicable to him because it was more severe than the equivalent mandatory discharge provision applicable to female officers. In upholding the distinctions between the provisions applicable to male officers and those applicable to female officers, the Supreme Court analyzed the different roles and career opportunities of female officers and noted:

> In both Reed and Frontiero the reason asserted to justify the challenged gender-based classifications was administrative convenience, and that alone. Here, on the contrary, the operation of the statutes in question results in a flow of promotions commensurate with the Navy's current needs and serves to motivate qualified commissioned officers to so conduct themselves that they may realistically look forward to higher levels of command. This Court has recognized that "it is the primary business of armies and navies to fight or to be ready to fight should the occasion arise." U.S. ex rel Troth v. Quarles, 350 U.S. 11, 17, 76 S.Ct. 1, 5, 100 L.Ed. 8 (1955). See also Orloff v. Willoughby, 345 U.S. 83, 94, 73 S. Ct. 534, 540, 97 L. Ed. 842 (1953). The responsibility for determening how best our armed forces shall attend to that business rests with Congress, see U.S. Constitution, Art. I, §8, cls. 12-14,

> and with the President. See U.S. Constitution, Ar. II, §2, cl. 1. We cannot say that, in exercising its broad constitutional power here, Congress has violated the Due Process Clause of the Fifth Amendment. (footnote omitted)

95 S. Ct. at 578-79.

The District Court found that the same kinds of considerations and distinctions were applicable to this case and properly held that the challenged regulation, now no longer in effect, constituted a rational means of achieving the Marine Corps' mobility and readiness requirements at that time. Accordingly, the decision of the District Court should be affirmed.

II. THE CHALLENGED REGULATION AND STEPHANIE CRAWFORD'S DISCHARGE THEREUNDER DID NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

Citing Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), Stephanie Crawford argues that the challenged regulation violated the Due Process Clause because it created an irrebuttable presumption that she was unfit for military service when pregnant. The argument is without merit and rests on a misreading of that case. The Supreme Court did not hold that all irrebuttable presumptions violate due process, but only that the "arbitrary cut-off dates embodied in the mandatory leave rules before us have no rational relationship to the valid interest of preserving continuity of instruction." 94 S. Ct. at 798. The Supreme Court examined the several mandatory school board rules, one requiring pregnant school teachers to take maternity leave five months before the expected birth of the child, and found that they simply did not bear a rationale relationship to the asserted state purpose.

By contrast, as set forth in detail in the District Court's findings and in Point I, supra, th

Marine Corps' challenged regulation does have a rational basis and, as testified by General Parnell, the regulation in large measure accomplished the necessary military readiness and mobility. It is undoubtedly true that a school boards' interest in continuity of education and in having teachers in the classroom who are physically capable of teaching does not justify mandatory and arbitrary cut-off dates, especially when individualized determinations would jeopardize the educational mission.

The Marine Corps' military mission, however, involves very different personnel needs. The requirement of individualized determinations or predictions that a pregnant Marine will be able to function fully throughout her pregnancy, or will be able to provide adequately for her dependents in the event of sudden transfer, may well jeopardize the military mission.

The facts surrounding Stephanie Crawford's own pregnancy present an excellent example of the numerous problems which can and do arise. During the first two months of her pregnancy, Stephanie Crawford reported to the base infirmary on 18 occasions, complaining of persistent nausea, fainting and black-out spells, abdominal

pain and fatigue. She also requested and received a change of duty assignment because of emotional pressure. During most of the last three months she was on crutches or confined to bed and by her own admission would have had great difficulty working for at least the last three months of her pregnancy.

The District Court found:*

> The Plaintiff's medical history established that her service after May 27, 1970 could only be performed at reduced level of physical capability that would overburden the assigned missions of the Marine Corps to constitute a mobile military arm, ready for immediate action within and beyond the continental limits of the United States (A 38).

In addition to the pregnancy related considerations, the Marine Corps also had to consider the numerous forseeable problems which were likely to arise if Stephanie Crawford remained in the Marine Corps with a dependent child.

---

* It is incorrectly argued (App. Br. 14) that the District Court found that "Appellant was able to carry on her assigned military occupation until her seventh month." In fact, what the District Court found was that "The plaintiff's medical records [at the Medical Center Hospital of Vermont] indicate nothing to medically prevent her from carrying on her assigned military occupation as late as her seventh month of pregnancy" (A 30). The Court was well aware, however, of her medical problems during the first two months of pregnancy.

The record in this case shows not only the interests of the Marine Corps in readiness and mobility of Marines but, in striking detail, the precarious medical condition of the plaintiff, and furnishes adequate support for the conclusion that plaintiff's "ability to continue at her job" would have been placed in serious question by her pregnancy. See Struck v. Secretary of Defense, 460 F.2d 1372 (9th Cir. 1971), cert. granted, 409 U.S. 947 (1972), vacated and remanded to consider the issue of mootness, 409 U.S. 1071 (1972); Gutierrez v. Laird, 346 F. Supp. 289 (D. D.C. 1972); Robinson v. Rand, 340 F. Supp. 37 (D. Colo. 1972).

Certainly as to Stephanie Crawford, the challenged regulation did not violate due process and any constitutional deprivations which arguably might be applicable to a pregnant Marine in good health are not properly presented here.

CONCLUSION

The decision of the District Court upholding the constitutionality of the Marine Corps' former pregnancy discharge regulation and dismissing the complaint should be affirmed.

Respectfully submitted,

GEORGE W. F. COOK
United States Attorney

By: William B. Gray
WILLIAM B. GRAY
Assistant U. S. Attorney

June 6, 1975

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

STEPHANIE CRAWFORD,

Appellant

v.

GENERAL ROBERT E. CUSHMAN, JR.
COMMANDANT,
UNITED STATES MARINE CORPS,

Appellee

CERTIFICATE OF SERVICE

I do hereby certify that on this 9th day of June, 1975, I made service of the BRIEF FOR THE APPELLEE upon Stephanie Crawford, Appellant, by mailing copies of same, postage prepaid, to Mary Just Skinner, Esq., Vermont Legal Aid, Inc., 43 State St., Box 658, Montpelier, Vermont 05602, attorney of record for said Appellant.

GEORGE W. F. COOK
United States Attorney

By: William B. Gray
WILLIAM B. GRAY
Assistant U. S. Attorney

Address:

P.O. Box 10
Rutland, VT. 05701